

30. Plaintiffs were not paid New York's "spread of hours" premiums for workdays in which they worked more than ten hours.

31. Plaintiffs were not paid one and one half times their regular overtime rate for hours worked in excess of forty hours in a workweek.

32. Plaintiffs sustained substantial losses from Defendants' failure to pay them New York's minimum wage and their illegal deductions from his pay.

33. Upon information and belief, other employees who worked for Defendants and who are FLSA Collective Plaintiffs and/or members of the Class were subjected to the same policies and practices and have sustained similar losses of compensation for numerous hours worked on behalf of Defendants.

**FIRST CLAIM FOR RELIEF**  
**(FLSA Minimum Wage and Record Keeping  
Violations, 29 U.S.C. §§ 201 *et seq.*  
Brought by Plaintiffs on Behalf of Themselves  
and the FLSA Collective Plaintiffs)**

34. Plaintiffs, on behalf of themselves and other FLSA Collective Plaintiffs, reallege and incorporate by reference all previous paragraphs.

35. Plaintiffs is informed and believes and thereon allege that at all relevant times, each Defendants has been, and continues to be, an "employer" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, each Defendant has employed, and continues to employ the FLSA Collective Plaintiffs as "employee[s]" within the meaning cf the FLSA.

36. Throughout the statute of limitations period covered by these claims, Defendants knowingly failed to pay Plaintiffs the federal minimum wage for each hour worked.

37. At all relevant times, Defendants has had, and continues to operate under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the FLSA Collective Plaintiffs the federal minimum wage for each hour worked.

38. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, seeks damages in the amount of their respective unpaid compensation, liquidated (double) damages as provided by the FLSA for minimum wage violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF**  
**(FLSA Overtime Violations, 29 U.S.C. §§ 201 *et seq.***  
**Brought by Plaintiff on Behalf of Themselves**  
**and the FLSA Collective Plaintiffs)**

39. Plaintiffs, on behalf of themselves and other FLSA Collective Plaintiffs, reallege and incorporate by reference all previous paragraphs.

40. Throughout the statute of limitations period covered by these claims, Plaintiffs and the other FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek and continue to do so.

41. At all relevant times, Defendants have had, and continue to operate under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the Class members at time and a half rates for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA even though the FLSA Collective Plaintiffs have been and are entitled to overtime.

42. At all relevant times, Defendants willfully, regularly and repeatedly failed, and continue to fail to pay Plaintiffs and the FLSA Collective Plaintiffs at the required

overtime rates, one and a half times their regular hourly rates, for hours worked in excess of forty (40) hours per workweek.

43. Plaintiffs on behalf of themselves and the FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

**THIRD CLAIM FOR RELIEF**  
(New York Minimum Wage Act, N.Y. Stat. § 650 *et seq.*,  
Brought by Plaintiffs on Behalf of  
Themselves and the Class)

44. Plaintiffs, on behalf of themselves and the Class members, reallege and incorporate by reference all previous paragraphs.

45. Defendants knowingly and willfully failed to pay Plaintiffs and the Class members the New York minimum wage for all hours worked.

46. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees, pursuant to N.Y. Lab. Law § 663.

47. Plaintiffs do not seek liquidated damages for this claim.

**FOURTH CLAIM FOR RELIEF**  
(New York Minimum Wage Act, N.Y. Stat. § 650 *et seq.*,  
Brought by Plaintiff on Behalf of  
Themselves and the Class)

48. Plaintiffs, on behalf of themselves and the Class members, reallege and incorporate by reference all previous paragraphs.

49. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

50. Throughout the Class Period, Defendants willfully, regularly and repeatedly failed, and continue to fail to pay Plaintiffs and the Class at the required overtime rates, one and a half times their regular hourly rates, for hours worked in excess of forty (40) hours per workweek.

51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees, pursuant to N.Y. Lab. Law § 663.

52. Plaintiffs do not seek liquidated damages for this claim.

**FIFTH CLAIM FOR RELIEF**  
**(Illegal Pay Deductions and Deductions from Gratuities,**  
**N.Y. Lab. L. §§ 193, 196-d and 198-b)**  
**Brought by Plaintiffs on Behalf of**  
**Themselves and the Class)**

53. Plaintiffs, on behalf of themselves and the Class members, reallege and incorporate by reference all previous paragraphs.

54. Defendants made and continue to make illegal deductions from Plaintiffs' and Class members' pay.

55. Defendants retained and continue to retain portions of Plaintiffs' tips and Class members' tips.

56. As a result of Defendants' willful and unlawful conduct, Plaintiffs and the Class members are entitled to an award of damages in an amount to be determined at trial and attorneys' fees.

57. Plaintiffs do not seek liquidated damages for this claim.

**SIXTH CLAIM FOR RELIEF**  
(New York Spread of Hours Provisions,  
N.Y. Lab. L. § 650 et seq., and N.Y. Comp. Code R. & Regs. tit. 12, § 137-1.7)  
Brought by Plaintiffs on Behalf of  
Themselves and the Class)

58. Plaintiffs, on behalf of themselves and the Class members, reallege and incorporate by reference all previous paragraph.

59. Plaintiffs and the Class members regularly worked more than 10 hours in a workday.

60. Defendants willfully failed and intentionally failed to compensate Plaintiff and/or Class members one hour's pay at the basic New York minimum hourly wage rate, as required by New York law.

61. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees, pursuant to N.Y. Lab. Law § 663.

62. Plaintiffs do not seek liquidated damages for this claim.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all other Covered Employees, prays for relief as follows:

- A. A declaratory judgment that the practices complained of herein are unlawful under FLSA;
- B. Certification of this action as a collective action brought pursuant to the FLSA § 216(b);
- C. Designation of Plaintiffs as representatives of the FLSA Collective Plaintiffs;
- D. Certification of the New York state law claims as a class action brought pursuant to FRCP Rule 23;
- E. Designation of the Plaintiffs as representativeS of the Class;
- F. An award of damages, according to proof, including liquidated damages under the FLSA, to be paid by Defendants;
- G. Costs of action incurred herein, including expert fees;
- H. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216 and other applicable statutes;
- I. An injunction against Defendants, its officers, agents, successors, employers, representatives and any and all persons acting in concert with it, from engaging in illegal deduction.
- J. Pre-Judgment and post-judgment interest, as provided by law; and
- K. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: New York, New York  
May 29, 2007

Respectfully submitted,

JOSEPH & HERZFELD LLP

By:

  
D. Maimon Kirschenbaum (DK-2338)

Charles E. Joseph (CJ-9442)  
757 Third Avenue  
25<sup>th</sup> Floor  
New York, NY 10017  
Tel: (212) 688-5640  
Fax: (212) 688-2548

Eric B. Kingsley\*  
Kingsley & Kingsley  
16133 Venture Blvd., Suite 1200  
Encino, CA 91436  
Tel. (818) 990-8300  
Fax (818) 990-2903  
\* Seeking Admission *Pro Hac Vice*

*Attorneys for Plaintiffs, proposed collective action members and proposed class*

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demands a jury trial on all causes of action and claims with respect to which she has a right to jury trial.